

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DAVID NATHANIEL ROBERTS,
Plaintiff,
v.
LYNCH, et al.,
Defendants.

No. 2:20-cv-01349 WBS DB P

ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 21, 2022, the Magistrate Judge issued an order finding that plaintiff's complaint stated a potentially cognizable First Amendment claim against defendants Peluso and Jones but did not state any other cognizable claims in the complaint, including against the "Accounting Staff" and "Mail Delivery Staff". (Docket No. 19.) The order directed plaintiff

1 to notify the court of how he wished to proceed, and it included
2 a form titled "Plaintiff's Notice on How to Proceed" with two
3 options: proceed immediately on his First Amendment interference
4 with mail claim against defendants Peluso and Jones and
5 voluntarily dismiss all other claims and defendants, or amend the
6 complaint. Plaintiff did not file a Notice of How to Proceed
7 form or otherwise notify the court of how he wished to proceed.

8 On May 19, 2022, the Magistrate Judge filed findings
9 and recommendations herein which were served on plaintiff and
10 which contained notice to plaintiff that any objections to the
11 findings and recommendations were to be filed within twenty-one
12 days. (Docket No. 20.) Plaintiff has not filed objections to
13 the findings and recommendations.

14 The court presumes that any findings of fact are
15 correct. See Orand v. United States, 602 F.2d 207, 208 (9th Cir.
16 1979). The magistrate judge's conclusions of law are reviewed de
17 novo. See Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452,
18 454 (9th Cir. 1983). Having reviewed the file, the court finds
19 the findings of the Magistrate Judge in her January 21, 2022
20 Order to be supported by the record and by the Magistrate Judge's
21 analysis. The court construes plaintiff's failure to file a
22 Notice on How to Proceed form as an indication that that he does
23 not wish to file an amended complaint. However, the court also
24 construes plaintiff's failure to file a Notice on How to Proceed
25 as an indication that plaintiff does wish to proceed against
26 defendants Peluso and Jones on his First Amendment interference
27 with mail claim, given that the Magistrate Judge previously found
28 that the complaint states a potentially cognizable claim against

1 them. Accordingly, the court declines to adopt the
2 recommendation that the entire action be dismissed.

3 Accordingly, IT IS HEREBY ORDERED that:


4 1. The Findings and Recommendations filed May 19,
5 2022 (Docket No. 20) are adopted to the extent they are not
6 inconsistent with this Order;

7 2. Plaintiff may proceed on his First Amendment
8 interference with mail claim against defendants Peluso and Jones;

9 3. All other claims and all other defendants are
10 dismissed from this action without prejudice, see Local Rule 110;
11 Fed. R. Civ. P. 41(b); and

12 3. This action is remanded to the assigned Magistrate
13 Judge for further proceedings.

14 Dated: September 26, 2022


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE